

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

PETITIONER,

v.

SETH J. STINEHOUR, D.P.M.,

RESPONDENT.

COMPLAINT AND NOTICE OF HEARING

Now comes the Petitioner, the West Virginia Board of Medicine ("Board") and for its Complaint against the Respondent, Seth J. Stinehour, D.P.M. ("Dr. Stinehour"), and states as follows:

1. The Respondent, Dr. Stinehour, is licensed to practice podiatric medicine in West Virginia and has been so licensed in West Virginia since 2004.
2. The Respondent's license is identified as West Virginia License No.10383, and his address of record with the Board is in Rochester, New York.
3. In July 2009, the Complaint Committee of the Board ("Committee") received a complaint against Dr. Stinehour from a former patient of Dr. Stinehour's alleging that Dr. Stinehour would not produce the patient's medical records and that the procedure Dr. Stinehour performed on the patient was ineffective, necessitating another surgery by a different physician.
4. Dr. Stinehour filed a timely response to the Complaint.
5. In his response, Dr. Stinehour claimed that the Complainant was "in possession of all his original pre-op and post-op x-rays, an incident in which I do not appreciate." Further Dr.

Stinehour claimed that the Complainant had appeared at Dr. Stinehour's office and had been "...disruptive in the waiting room, panicked my staff member handed the original films to him. She acted under duress and in the best interest of the patient(s)."

6. On September 29, 2009, the Complainant, by counsel, filed a reply to the response filed by Dr. Stinehour. The Complainant denied being verbally abusive to Dr. Stinehour's staff and indicated that the Complainant was only given the post-op X-ray, not the pre-op X-ray. The Complainant also indicated that his subsequent treating physician attempted to obtain the complete office records and X-rays of the Complainant, and was unable to do so.

7. Further investigation ensued.

8. In November 2009, a Subpoena Duces Tecum was issued by the Board commanding Dr. Stinehour to produce a number of documents in relation to the treatment of the Complainant.

9. Dr. Stinehour did not produce all of the documents required by the November 2009 Subpoena Duces Tecum, in particular, the purported pre-op X-rays of the Complainant. Dr. Stinehour produced a note from the chart documenting a pre-op appointment with the Complainant, which note indicated that on November 12, 2007, X-rays were taken of the Complainant. The note indicates, "X-ray of the Calcaneus taken in 2 views reveals bone spur at 4. [done by ss]."

10. In January 2010, a Subpoena Duces Tecum was issued by the Board commanding Dr. Stinehour's appearance at a meeting of the Complaint Committee in March, 2010. The January 2010 Subpoena Duces Tecum commanded Dr. Stinehour to bring the entire original medical record(s)/file(s), including any and all pre-op X-rays, including the materials covered by the Subpoena Duces Tecum issued in November 2009.

11. Dr. Stinehour appeared for an informal meeting with the Complaint Committee on March 7, 2010, but did not comply with either the November 2009 Subpoena Duces Tecum or the January 2010 Subpoena Duces Tecum.

12. Further investigation ensued and the Board issued a number of additional subpoenas in this matter.

13. Dr. Stinehour did not maintain an adequate medical chart in his care of the Complainant, including his failure to maintain an original pre-op X-ray.

14. Dr. Stinehour did not adhere to the standard of care in his podiatric practice, including the care of the Complainant, and including, but not limited to, medical record creation and maintenance.

COUNT I

15. The Petitioner incorporates by reference paragraphs one (1) through fourteen (14) as fully restated herein.

16. Dr. Stinehour failed to keep written records justifying the course of treatment, in violation of W.Va. Code §30-3-14(c)(11) and (17) and 11 CSR 1A 12.1(u) and/or (jj).

COUNT II

17. The Petitioner incorporates by reference paragraphs one (1) through fourteen (14) as fully restated herein.

18. Dr. Stinehour failed to practice podiatry with that level of care, skill and treatment recognized by a reasonable, prudent podiatrist, engaged in the same or similar specialty as being acceptable under similar conditions or circumstances in violation of W.Va. Code §30-3-14(c)(17) and 11 CSR 1A 12.1(x).

COUNT III

19. The Petitioner incorporates by reference paragraphs one (1) through fourteen (14) as fully restated herein.


20. Dr. Stinehour engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof in violation of W.Va. Code §30-3-14(c)(17), 11 CSR 1A 12.1(e) and 12.2(d).


21. The continued practice by Dr. Stinehour as a podiatrist in the State of West Virginia will adversely affect the health and welfare of patients.

Accordingly, the Respondent, Dr. Stinehour, is hereby notified that a hearing will be convened on January 26, 2011, at 9:00 A.M., and shall continue thereafter from day to day until completed, in the offices of the West Virginia Board of Medicine, 101 Dee Drive, Suite 103, Charleston, West Virginia. The purpose of the hearing will be to determine whether disciplinary action should be imposed upon Dr. Stinehour's license to practice podiatric medicine in West Virginia. The Respondent, Dr. Stinehour, must be present in person, and may be accompanied by an attorney if he desires, and may present witnesses or other evidence which he may desire to present on his behalf. Failure of Dr. Stinehour to serve an answer on Petitioner Board within thirty (30) days after service of the Complaint and Notice of Hearing upon him entitles Petitioner Board to take all of the allegations as confessed by Dr. Stinehour, under provisions of 11 CSR 3 11.5(s). Dr. Stinehour shall, in writing and within fifteen (15) days of receipt of this Complaint and Notice of Hearing, select as Hearing Examiner, either Jack C. McClung, Esq. or Rebecca L. Stepto, Esq. to preside at, and conduct, the proceedings.

Dated this 12th day of October, 2010.

WEST VIRGINIA BOARD OF MEDICINE


Reverend O. Richard Bowyer
President

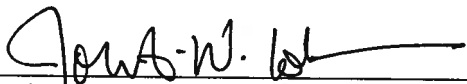

Catherine Slemp, M.D., M.P.H.
Secretary

CERTIFICATE OF SERVICE

I, John A. W. Lohmann, Esq., counsel for Petitioner, The West Virginia Board of Medicine, do hereby certify that I have served the foregoing "Complaint and Notice of Hearing" upon Respondent, Seth J. Stinehour, D.P.M., by depositing a true and accurate copy thereof in an envelope and transmitting the same via certified U.S. Mail, with postage prepaid, this 12th day of October, 2010, addressed as follows:

Seth J. Stinehour, D.P.M.
150 Fairhaven Road
Rochester, New York 14610

Paul T. Farrell, Esq.
Farrell, Farrell and Farrell
914 Fifth Avenue
P.O. Box 6457
Huntington, WV 25772



John A. W. Lohmann, Esq.
Counsel for Petitioner

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

Board of Medicine Complaint No. 09-131-A

SETH J. STINEHOUR, D.P.M.,

Respondent.

ORDER GRANTING RESPONDENT'S MOTION TO CONTINUE

On December 1, 2010, came Respondent, Seth J. Stinehour, D.P.M, by counsel, Paul T. Farrell and Farrell, Farrell & Farrell, PLLC, and moved to continue the hearing in this matter from January 26, 2011, to a date approximately 60 to 80 days later.

As grounds for his motion, counsel for Respondent asserts that he would have inadequate time to adequately prepare for the hearing due to his representation of a party in a jury trial in the case of Silk v. Raleigh General Hospital, Civil Action No. 08-C-657-B, pending in the Circuit Court of Raleigh County, West Virginia. Counsel for Respondent further asserts that the trial in that case was scheduled to begin on January 11, 2011, and was expected to last from five to seven days.

Petitioner, the West Virginia Board of Medicine, by counsel, John A.W. Lohmann, opposes the Respondent's motion, and argues that Respondent had discharged Mr. Farrell as counsel in October, 2010, and had apparently recently re-instated Mr. Farrell

as counsel. Petitioner further asserts that Respondent's license to practice podiatry in the state of West Virginia expires on June 30, 2011; that Respondent currently lives and works in New York, and that there is no reason to expect Respondent to renew his West Virginia license in June, 2011. Petitioner argues that to move the hearing date from the currently scheduled date of January 26, 2011, would "create difficult time pressures and complicate issues associated with any potential appeal in this case." Although Petitioner does not explain or expand upon this argument, it further asserts that while it takes the position that it retains jurisdiction over a former licensee in a disciplinary action even after his license has expired, "it is a colorable issue that may lead to unnecessary complications and future appeals."

Petitioner argues that the central issues in this case are fairly simple and straightforward, that the amount of preparation needed to present a defense is not extremely burdensome, that Mr. Farrell is experienced and that his firm letterhead appears to reflect that he has 11 other attorneys, and paralegals, available to assist him. Petitioner further asserts that Respondent "is" presented with Petitioner's mandatory disclosures and materials it will use in its case-in-chief in advance of the hearing, but Petitioner does not state when such disclosures have been made, or will be made.

Respondent responds to Petitioner's arguments by stating that it minimizes the significant impact that the Petitioner's potentially (negative) ruling could have on his license and that the representation of Respondent should not be "handed off" to another attorney in his firm, as he was personally selected to represent Respondent in this matter. Counsel for Respondent further asserts that the trial in the civil action (Silk v.

Raleigh General Hospital) requires significant preparation time, including travel to Philadelphia and then to Beckley, West Virginia, for additional depositions just prior to trial, as well as pre-trial hearings and witness preparation, all of which is "further complicated" by the holiday season.

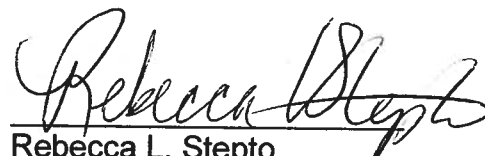
The undersigned Hearing Examiner has been provided with only the Complaint and Notice of Hearing in this matter, which was received on or about December 10, 2010.

In light of the unverified and somewhat vague representations of both Petitioner and Respondent, the undersigned Hearing Examiner makes the following ruling based upon the limited record before her:

It is HEREBY found that good cause has been shown for the continuance of the hearing in this matter until a date no earlier than 45 days following the currently scheduled hearing date of January 26, 2011. It is further found that the Petitioner will not be unduly prejudiced by the granting of this motion.

WHEREFORE, the Respondent's Motion to Continue Hearing is GRANTED, although the Respondent's request to continue the hearing until 60 to 90 days after the currently scheduled date of January 26, 2011, is DENIED. The Petitioner may schedule the hearing to begin on a date on or after March 14, 2011.

Dated this 19th day of December, 2010.


Rebecca L. Stepto
Hearing Examiner